

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LEONOR G.,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner
of Social Security,

Defendant.

NO. 2:20-CV-0100-TOR

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 15, 16). The Court has reviewed the administrative record and the parties' completed briefing, and is fully informed. For the reasons discussed below, the Court **DENIES** Plaintiff's motion and **GRANTS** Defendant's motion.

JURISDICTION

The Court has jurisdiction pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~ 1

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* An error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability determination."

1 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
 2 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
 3 *Sanders*, 556 U.S. 396, 409-10 (2009).

4 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

5 A claimant must satisfy two conditions to be considered “disabled” within
 6 the meaning of the Social Security Act. First, the claimant must be unable “to
 7 engage in any substantial gainful activity by reason of any medically determinable
 8 physical or mental impairment which can be expected to result in death or which
 9 has lasted or can be expected to last for a continuous period of not less than 12
 10 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
 11 impairment must be “of such severity that [he or she] is not only unable to do [his
 12 or her] previous work[,] but cannot, considering [his or her] age, education, and
 13 work experience, engage in any other kind of substantial gainful work which exists
 14 in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

15 The Commissioner has established a five-step sequential analysis to
 16 determine whether a claimant satisfies the above criteria. *See* 20 §§
 17 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
 18 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
 19 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
 20

1 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(b), 416.920(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
6 claimant suffers from "any impairment or combination of impairments which
7 significantly limits [his or her] physical or mental ability to do basic work
8 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
9 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
10 however, the Commissioner must find that the claimant is not disabled. *Id.*

11 At step three, the Commissioner compares the claimant's impairment to
12 several impairments recognized by the Commissioner to be so severe as to
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
14 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
15 severe than one of the enumerated impairments, the Commissioner must find the
16 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

17 If the severity of the claimant's impairment does meet or exceed the severity
18 of the enumerated impairments, the Commissioner must pause to assess the
19 claimant's "residual functional capacity." Residual functional capacity, defined
20 generally as the claimant's ability to perform physical and mental work activities

1 on a sustained basis despite his or her limitations (20 C.F.R. §§ 404.1545(a)(1),
2 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in
5 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv),
6 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
7 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
8 404.1520(f), 416.920(f). If the claimant is incapable of performing such work, the
9 analysis proceeds to step five.

10 At step five, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing other work in the national economy.
12 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
13 the Commissioner must also consider vocational factors such as the claimant's age,
14 education and work experience. *Id.* If the claimant is capable of adjusting to other
15 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
16 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
17 work, the analysis concludes with a finding that the claimant is disabled and is
18 therefore entitled to benefits. *Id.*

19 The claimant bears the burden of proof at steps one through four above.
20 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to

1 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
2 capable of performing other work; and (2) such work “exists in significant
3 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2);
4 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

5 **ALJ’S FINDINGS**

6 On January 5, 2017, Plaintiff filed an application for Title II disability
7 insurance benefits and Title XVI supplemental security income benefits, alleging
8 an onset date of December 25, 2016. Tr. 19. The application was initially denied
9 and denied again on reconsideration. Tr. 19. Plaintiff appeared at a hearing before
10 an administrative law judge (“ALJ”) on November 8, 2018. Tr. 19. The ALJ
11 denied Plaintiff’s claim on January 30, 2019. Tr. 16.

12 As a threshold matter, the ALJ found Plaintiff would meet the insured status
13 requirements of the Social Security Act through December 31, 2021. Tr. 22. At
14 step one of the sequential evaluation analysis, the ALJ found Plaintiff had not
15 engaged in substantial gainful activity after December 25, 2016, the alleged onset
16 date. Tr. 22. At step two, the ALJ found Plaintiff had the following severe
17 impairments: obesity; diabetes mellitus with neuropathy; degenerative disc disease;
18 dermatitis; and right eye vision loss. Tr. 22. At step three, the ALJ found Plaintiff
19 did not have an impairment or combination of impairments that meets or medically
20 equals the severity of a listed impairment. Tr. 24. The ALJ then found Plaintiff

1 had a residual functional capacity to perform light work with the following
2 limitations:

3 [Plaintiff] can stand/walk for 4 hours in an 8-hour day; she can sit
4 through a work day with normal breaks; she needs an option to change
5 sitting/standing positions every 30 minutes, while remaining at the
6 work station; she can engage in occasional, non-repetitive operation of
7 foot controls bilaterally; she can occasionally climb ramps/stairs,
8 balance, stoop, kneel, or crouch; she can never crawl or climb ladders,
ropes, or scaffolds; she can frequently handle and finger bilaterally;
she should avoid concentrated exposure to extremes of heat/cold,
pulmonary irritants, and hazards; and she has no vision in the right
eye.

9 Tr. 24.

10 At step four, the ALJ found Plaintiff was not capable of performing any past
11 relevant work. Tr. 30. At step five, the ALJ found that, considering Plaintiff's
12 age, education, work experience, residual functional capacity, and testimony from
13 a vocational expert, there were other jobs that existed in significant numbers in the
14 national economy that Plaintiff could perform, such as a telephone quotation clerk,
15 call-out operator, addresser, and document preparer. Tr. 31. The ALJ concluded
16 Plaintiff was not under a disability, as defined in the Social Security Act, from
17 December 25, 2016, the alleged onset date, through January 30, 2019, the date of
18 the ALJ's decision. Tr. 31.

1 On January 16, 2020, the Appeals Council denied review (Tr. 1-6), making
2 the ALJ's decision the Commissioner's final decision for purposes of judicial
3 review. *See* 20 C.F.R. §§ 404.981, 416.1481, 422.210.

4 ISSUES

5 Plaintiff seeks judicial review of the Commissioner's final decision denying
6 her disability insurance benefits under Title II and supplemental security income
7 benefits under Title XVI of the Social Security Act. Plaintiff raises the following
8 issues for this Court's review:

- 9 1. Whether the ALJ properly evaluated Plaintiff's impairments;
- 10 2. Whether the ALJ properly weighed Plaintiff's subjective symptom
11 testimony;
- 12 3. Whether the ALJ properly weighed the medical opinion evidence; and
- 13 4. Whether the ALJ met his burden in determining Plaintiff could perform
14 other jobs available in the national economy.

15 ECF No. 15 at 5.

16 DISCUSSION

17 A. Plaintiff's Impairments

18 Plaintiff contends the ALJ failed to identify some of Plaintiff's impairments
19 as severe at step two. ECF No. 15 at 7-13. At step two of the sequential process,
20 the ALJ must determine whether a claimant suffers from a "severe" impairment,

1 i.e., one that significantly limits her physical or mental ability to do basic work
2 activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). To show a severe impairment,
3 the claimant must first prove the existence of a physical or mental impairment by
4 providing medical evidence consisting of signs, symptoms, and laboratory
5 findings; the claimant's own statement of symptoms alone will not suffice. 20
6 C.F.R. §§ 404.1521, 416.921.

7 An impairment may be found non-severe when "medical evidence
8 establishes only a slight abnormality or a combination of slight abnormalities
9 which would have no more than a minimal effect on an individual's ability to work
10" Social Security Ruling (SSR) 85-28, 1985 WL 56856, at *3. Similarly, an
11 impairment is not severe if it does not significantly limit a claimant's physical or
12 mental ability to do basic work activities, which include walking, standing, sitting,
13 lifting, pushing, pulling, reaching, carrying, or handling; seeing, hearing, and
14 speaking; understanding, carrying out and remembering simple instructions;
15 responding appropriately to supervision, coworkers and usual work situations; and
16 dealing with changes in a routine work setting. 20 C.F.R. §§ 404.1522, 416.922;
17 *see also* SSR 85-28.

18 Step two is "a de minimis screening device to dispose of groundless claims."
19 *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (citation omitted). "Thus,
20 applying our normal standard of review to the requirements of step two, [the

1 Court] must determine whether the ALJ had substantial evidence to find that the
2 medical evidence clearly established that [Plaintiff] did not have a medically
3 severe impairment or combination of impairments.” *Webb v. Barnhart*, 433 F.3d
4 683, 687 (9th Cir. 2005).

5 *1. Severity of Mental Impairments*

6 Plaintiff contends the ALJ erred in finding Plaintiff’s depression and anxiety
7 as non-severe impairments. ECF No. 15 at 7-12. In evaluating a claimant’s mental
8 impairments, an ALJ follows a special two-step psychiatric review technique. *See*
9 20 C.F.R. §§ 404.1520a, 416.920a. First, the ALJ must determine whether there is
10 a medically determinable impairment. 20 C.F.R. §§ 404.1520a(b)(1),
11 416.920a(b)(1). If the ALJ determines an impairment exists, the ALJ must rate the
12 degree of functional limitation resulting from the impairment in the following four
13 broad functional categories: (1) understand, remember, or apply information; (2)
14 interact with others; (3) concentrate, persist, or maintain pace; and (4) adapt or
15 manage oneself. 20 C.F.R. §§ 404.1520a(c)(3), 416.920a(c)(3). If the ALJ rates
16 the degree of limitation as “none” or “mild,” the ALJ will generally conclude the
17 impairment is not severe. *Id.*

18 Plaintiff does not challenge the ALJ’s application of the special two-step
19 review technique; rather, Plaintiff only challenges the ALJ’s conclusions. At step
20 one, the ALJ found Plaintiff’s depression, mild intellectual disability, and anxiety

1 were medically determinable mental impairments. Tr. 22. The ALJ then
2 proceeded to step two, considering each of the four broad areas of mental
3 functioning. Tr. 22-23. Based on the following findings, the ALJ concluded the
4 impairments caused only minimal limitation to Plaintiff's ability to perform basic
5 mental work activities. Tr. 22-23.

6 As to the first functional area of understanding, remembering, or applying
7 information, the ALJ rated Plaintiff's limitations as mild. Tr. 23. The ALJ noted
8 Plaintiff graduated from high school and had some college education (Tr. 23);
9 enjoyed reading the Bible as a hobby (Tr. 23 (citing Tr. 272)); did not report
10 problems with understanding, memory, or following directions (Tr. 23 (citing Tr.
11 249, 273)); and typically presented with intact cognition and memory at care
12 provider appointments (Tr. 23 (citing Tr. 400-01, 573, 1038, 1101, 1107, 1109)).
13 The ALJ further noted that while Plaintiff scored in the extremely low range on a
14 full-scale IQ test conducted in September 2017, the test evaluator assessed her
15 responses as random and/or inconsistent, which raised questions as to the
16 reliability of the information provided by Plaintiff. Tr. 23 (citing Tr. 419-20).

17 Under the second functional area of interacting with others, the ALJ rated
18 Plaintiff with no limitations. Tr. 23. Plaintiff did not report difficulty getting
19 along with others in her function reports, nor did she report ever losing a job due to
20 her ability to get along with others. Tr. 23 (citing Tr. 250, 274). Plaintiff reported

1 good relationships with her family with whom she enjoyed spending time and
2 attending church. Tr. 23 (citing Tr. 248, 272-73). The ALJ further noted Plaintiff
3 presented as pleasant, friendly, and/or cooperative at treatment and testing
4 appointments. Tr. 23 (citing Tr. 393, 401, 410, 421, 576, 1052).

5 Regarding the third functional category of concentrating, persisting, or
6 maintaining pace, the ALJ rated Plaintiff's limitations as mild. Tr. 23. The ALJ
7 again made note of the September 2017 testing in which Plaintiff scored extremely
8 low in tasks assessing attention span, concentration, and control of mental exertion.
9 Tr. 23 (citing Tr. 419-20). However, the ALJ found Plaintiff's inconsistent and/or
10 random responses undermined the testing results. Tr. 23. Additionally, Plaintiff
11 did not report problems with concentration or attention in her function reports. Tr.
12 23 (citing Tr. 249, 273). A psychological evaluation performed in June 2017
13 further supported the ALJ's finding where Plaintiff's ability to maintain attention
14 and concentration for extended periods was evaluated as unimpaired. Tr. 23
15 (citing Tr. 412).

16 In the final functional category of adapting or managing oneself, the ALJ
17 rated Plaintiff's limitation as none to mild. Tr. 23. The ALJ supported the rating
18 by citing Plaintiff's own reports regarding her mental ability to care for and
19 manage herself. *Id.* Plaintiff reported she was able to manage personal care tasks,
20 meal preparation, some household chores, grocery shopping, and bill paying. Tr.

23 (citing Tr. 245-47, 269-71). Additionally, the ALJ noted Plaintiff presented as well-groomed with good personal hygiene at treatment appointments. Tr. 23 (citing Tr. 400, 410, 420, 1068, 1070). Plaintiff's medical exams were devoid of any behavioral abnormalities. Tr. 23 (citing 410, 421, 563).

After considering Plaintiff's impairments, together and individually, under the special two-step psychiatric review, the ALJ concluded the record as a whole supported a finding that Plaintiff's mental limitations were not severe. Plaintiff argues the ALJ's conclusions were erroneous, citing to her own reported mental health symptoms (Tr. 1048, 1057, 1074), her own reported mental capacity (Tr. 246, 249, 270, 273P), and two mental health evaluations the ALJ merited only little weight¹ (Tr. 408-12, 1155-58). While Plaintiff's citations support the ALJ's finding of a medically determinable mental impairment, the ALJ's conclusions are supported by substantial evidence that contradict the severity of impairment reported by Plaintiff. Even if the ALJ erroneously identified these impairments as non-severe, any error would be harmless because the step was resolved in

¹ Plaintiff challenges the ALJ's rejection of two witness testimonies: that of Valerie Vela, MSW, and the September 2017 psychological evaluation by Dr. Genthe. ECF No. 15 at 11, 12. The Court addresses the rejection of these testimonies in Section C, *infra*.

1 Plaintiff's favor and the ALJ considered Plaintiff's mental limitations when
2 assessing Plaintiff's residual functional capacity. *See Dattilo v. Berryhill*, 773 F.
3 App'x 878, 880 (9th Cir. 2019); *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d
4 1050, 1055 (9th Cir. 2006); *Burch v. Barnhart*, 400 F.3d 676, 682-83 (9th Cir.
5 2005) (finding harmless error where the ALJ failed to identify an impairment as
6 severe at step two but accounted for the impairment at step five).

7 2. *Severity of Physical Impairments*

8 Plaintiff also argues the ALJ erred in identifying Plaintiff's carpal tunnel
9 syndrome as a non-severe impairment. ECF No. 15 at 12-13. The ALJ did not
10 specifically address the condition at step two. The ALJ did, however, note
11 Plaintiff's carpal tunnel syndrome appeared occasionally in her medical records,
12 but ultimately found it did not cause significant limitations or did not last for a
13 continuous period of 12 months. Tr. 22 (citing Tr. 561, 714). Plaintiff cites to two
14 medical notations and argues they support a finding of limited functionality that
15 would prevent Plaintiff from being able to perform the jobs identified by the ALJ.
16 ECF No. 15 at 13 (citing Tr. 561 (noting moderate bilateral carpal tunnel
17 syndrome); Tr. 714 (assessing carpal tunnel syndrome with slightly weakened
18 grip)).

19 Based on the record as a whole, the Court finds the ALJ's finding was
20 reasonable. Again, even if the ALJ erred in failing to identify the carpal tunnel

1 syndrome as severe at step two, the error was harmless because the step was
2 resolved in Plaintiff's favor and the carpal tunnel syndrome was considered when
3 assessing her residual functional capacity. *See* Tr. 24 (finding Plaintiff was
4 capable of frequent bilateral handling and finger movement); *Burch*, 400 F.3d at
5 682-83 (9th Cir. 2005); *see also Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir.
6 2007).

7 The Court finds the ALJ's conclusions regarding the severity of Plaintiff's
8 depression, anxiety, and carpal tunnel syndrome were supported by substantial
9 evidence. Even if the ALJ erred in failing to identify these conditions as severe,
10 any error was harmless because step two was resolved in Plaintiff's favor and all
11 severe and non-severe impairments were considered at step five.

12 **B. Plaintiff's Symptom testimony**

13 Plaintiff contends the ALJ erred in rejecting her subjective symptom
14 testimony. ECF No. 15 at 7-13. An ALJ engages in a two-step analysis to
15 determine whether a claimant's subjective symptom testimony can be reasonably
16 accepted as consistent with the objective medical and other evidence in the
17 claimant's record. SSR 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must
18 determine whether there is 'objective medical evidence of an underlying
19 impairment which could reasonably be expected to produce the pain or other
20 symptoms alleged.'" *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012)

1 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). “The claimant is
2 not required to show that her impairment ‘could reasonably be expected to cause
3 the severity of the symptom she has alleged; she need only show that it could
4 reasonably have caused some degree of the symptom.’” *Vasquez*, 572 F.3d at 591
5 (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007)).

6 Second, “[i]f the claimant meets the first test and there is no evidence of
7 malingering, the ALJ can only reject the claimant’s testimony about the severity of
8 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
9 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
10 omitted). General findings are insufficient; rather, the ALJ must identify what
11 symptom claims are being discounted and what evidence undermines these claims.
12 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
13 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
14 explain why he or she discounted claimant’s symptom claims). “The clear and
15 convincing [evidence] standard is the most demanding required in Social Security
16 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
17 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

18 The ALJ is instructed to “consider all of the evidence in an individual’s
19 record,” “to determine how symptoms limit ability to perform work-related
20 activities.” SSR 16-3p, 2016 WL 1119029, at *2. When evaluating the intensity,

1 persistence, and limiting effects of a claimant's symptoms, the following factors
2 should be considered: (1) daily activities; (2) the location, duration, frequency, and
3 intensity of pain or other symptoms; (3) factors that precipitate and aggravate the
4 symptoms; (4) the type, dosage, effectiveness, and side effects of any medication
5 an individual takes or has taken to alleviate pain or other symptoms; (5) treatment,
6 other than medication, an individual receives or has received for relief of pain or
7 other symptoms; (6) any measures other than treatment an individual uses or has
8 used to relieve pain or other symptoms; and (7) any other factors concerning an
9 individual's functional limitations and restrictions due to pain or other symptoms.

10 SSR 16-3p, 2016 WL 1119029, at *7-8; 20 C.F.R. §§ 404.1529(c)(3),
11 416.929(c)(3).

12 Here, the ALJ found Plaintiff's impairments could reasonably be expected to
13 cause the alleged symptoms; however, Plaintiff's statements concerning the
14 intensity, persistence, and limiting effects of those symptoms were not entirely
15 consistent with the evidence. Tr. 25. In arriving at this conclusion, the ALJ
16 considered several of the factors described above.

17 In regard to Plaintiff's daily activities, the ALJ found she was "quite
18 functional despite her physical symptoms." Tr. 26. Daily activities may be
19 grounds for an adverse credibility finding if (1) Plaintiff's activities contradict her
20 other testimony, or (2) Plaintiff "is able to spend a substantial part of [her] day

1 engaged in pursuits involving the performance of physical functions that are
2 transferable to a work setting.” *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007)
3 (citation omitted). Despite her allegations of mobility and standing difficulties,
4 Plaintiff indicated in her February 2017 function report that she was able to prepare
5 her own meals and able to do chores like washing dishes, sweeping, and washing
6 clothes for periods of up to two hours. Tr. 26 (citing Tr. 246). She also stated she
7 regularly attended church and spent time with family. Tr. 26 (citing Tr. 247-48).
8 She did not report regular use of an assistive device such as a walker, wheelchair,
9 or cane while engaged in these activities. Tr. 26 (citing Tr. 250).

10 Plaintiff argues the ALJ’s conclusions were erroneous, noting the same
11 function report indicated she required assistance with shaving her legs, preparing
12 meals, getting dressed, and shopping. ECF No. 15 at 18. However, Plaintiff’s own
13 interpretation of the report cannot overturn the ALJ’s conclusions. “Where
14 evidence is susceptible to more than one rational interpretation, it is the ALJ’s
15 conclusion that must be upheld.” *Burch*, 400 F.3d at 679 (citation omitted). While
16 the Ninth Circuit has cautioned against reliance on “certain daily activities, such as
17 grocery shopping, driving a car, or limited walking for exercise” to discount a
18 plaintiff’s symptom allegations, the ALJ here considered other factors and found
19 additional reasons for discrediting Plaintiff’s subjective symptom testimony.
20 *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001).

1 As to the location, duration, frequency, and intensity of pain or other
2 symptoms, the ALJ concluded Plaintiff's allegations of chronic pain and difficulty
3 getting around were inconsistent with her reports to medical providers and the
4 objective medical findings. Tr. 26. An ALJ may not discredit a claimant's
5 symptom testimony and deny benefits solely because the degree of the symptoms
6 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261
7 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.
8 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch*, 400 F.3d at 680.
9 However, the objective medical evidence is a relevant factor, along with the
10 medical source's information about the claimant's pain or other symptoms, in
11 determining the severity of a claimant's symptoms and their disabling effects.
12 *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2); 416.929(c)(2).

13 The ALJ cited to several instances in which Plaintiff's reports to medical
14 examiners conflicted with her alleged degree of impairment. In a May 2017
15 medical examination, Plaintiff reported she was healthy and exercising. Tr. 26
16 (citing Tr. 393). A month later, Plaintiff reported a busy week taking care of
17 children. Tr. 26 (citing Tr. 584). In July 2017, Plaintiff again reported she was
18 exercising regularly. Tr. 26 (citing Tr. 585). Additionally, the AJL found the
19 objective medical findings, including x-rays and physical exams, were inconsistent
20 with Plaintiff's allegations. Tr. 26 (citing Tr. 593, 595, 620). Specifically, a

1 September 2017 x-ray revealed only mild degenerative disc disease and
2 spondylosis, partial sacralization with pseudoarthrosis, and 3 mm degenerative
3 anterolisthesis with no abnormal vertebral motion with flexion or extension. Tr. 26
4 (citing Tr. 593). Notably, around that same time, Plaintiff reported that changing
5 between sitting and standing positions eased her pain. Tr. 26 (citing 595). Another
6 imaging study noted the changes in Plaintiff's spine were "so common in adults
7 without low back pain" that the findings should be "interpreted with caution. Tr.
8 27 (citing Tr. 1153). In October 2017, a physical exam revealed no edema
9 (swelling) and a subsequent November 2017 exam showed only trace edema. Tr.
10 26 (citing Tr. 611, 620). Finally, clinicians observed that Plaintiff walked without
11 an assistive device, had good neurological sensation, and showed good strength.
12 Tr. 27 (citing 672, 1145).

13 Plaintiff cites to medical care visits regarding a variety of ailments including
14 diabetic foot ulcers (*see, e.g.*, Tr. 611, 622, 692, 891) and decreased sensation
15 associated with diabetic neuropathy (*see, e.g.*, Tr. 325, 382, 511, 568, 627) to
16 support her assertion that the ALJ improperly rejected her subjective symptom
17 testimony. However, it is the ALJ's responsibility to resolve conflicts in the
18 medical evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Where
19 the ALJ's interpretation of the record is reasonable as it is here, it should not be
20 second-guessed. *Rollins*, 261 F.3d at 857. And again, "[w]here evidence is

1 susceptible to more than one rational interpretation, it is the ALJ's conclusion that
2 must be upheld." *Burch*, 400 F.3d at 679 (citation omitted). Moreover, the ALJ
3 accounted for Plaintiff's pain and movement difficulties by finding Plaintiff had a
4 reduced residual functional capacity. *See* Tr. 24 (finding, *inter alia*, Plaintiff could
5 stand/walk for 4 hours; needs to change sitting/standing positions every 30
6 minutes; can occasionally climb stairs/ramps).

7 The ALJ also considered Plaintiff's success with conservative treatment to
8 alleviate her symptoms, specifically physical and aquatic therapy. The Ninth
9 Circuit has "previously indicated that evidence of conservative treatment is
10 sufficient to discount a claimant's testimony regarding severity of an impairment."
11 *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007) (internal quotations omitted).
12 The record indicated Plaintiff had a "normal" response to the therapy and made
13 "good progression" with exercises. Tr. 27 (citing Tr. 666, 1128, 1131, 1138).
14 Plaintiff reported reduced knee pain and an examination noted she had improved
15 movement in her hips and low back. Tr. 27 (citing Tr. 671-72). Plaintiff did not
16 report needing to use an assistive device such as a walker, cane, or wheelchair. Tr.
17 27 (citing Tr. 672).

18 Another factor considered by the ALJ was the relatively stable nature of
19 Plaintiff's chronic conditions. Specifically, Plaintiff's diabetes was reported "at
20 goal" in March 2018. Tr. 27 (citing Tr. 675). Around that same time, Plaintiff

1 reported increased work around the house and exercise. Tr. 27 (citing Tr. 1084).
2 Despite several falls later in the month that increased her back pain, Plaintiff
3 reported doing well in May 2018. Tr. 27 (citing Tr. 696). In subsequent medical
4 exams, Plaintiff reported continued exercise and house chores (Tr. 696, 697, 720,
5 1139), and blood sugar levels of 100-150 during the day (Tr. 720). Medical exam
6 notes indicated Plaintiff continued have a “normal response” to physical therapy
7 (Tr. 1128, 1131, 1138) and also noted Plaintiff tolerated gym exercises “really
8 well” (Tr. 697). The ALJ made note of Plaintiff’s lifelong vision condition but
9 found Plaintiff had engaged in gainful activity levels with the condition in the past
10 and that her vision in her left eye compensated for the vision loss in her right eye.
11 Tr. 27 (citing Tr. 646, 648, 650).

12 Plaintiff argues her chronic conditions were not stable, particularly her
13 diabetes. ECF No. 15 at 19. She also argues her success with physical therapy
14 was not long-lasting. *Id.* at 20. However, ALJ noted Plaintiff’s medical record
15 reflected a history of non-compliance with diabetes medications. Tr. 26 (citing Tr.
16 568, 373). “Impairments that can be controlled effectively with medication are not
17 disabling for the purpose of determining eligibility for SSI benefits.” *Warre v.*
18 *Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006). The record as a
19 whole supports the ALJ’s finding that Plaintiff’s conditions were controlled by
20 medication, diet, and exercise.

1 The ALJ's conclusion that Plaintiff's subjective symptom testimony
2 conflicted with the evidence was clear, convincing, and properly supported by
3 substantial evidence.

4 **C. Medical Testimony**

5 Plaintiff argues the ALJ erred in rejecting the medical opinions of Dr. Maria
6 Celerian, MD, Valerie Vela, MSW, and Dr. Thomas Genthe, Ph.D. ECF No. 15 at
7 13.

8 There are three types of physicians: "(1) those who treat the claimant
9 (treating physicians); (2) those who examine but do not treat the claimant
10 (examining physicians); and (3) those who neither examine nor treat the claimant
11 [but who review the claimant's file] (nonexamining [or reviewing] physicians)."
12 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
13 Generally, the opinion of a treating physician carries more weight than the opinion
14 of an examining physician, and the opinion of an examining physician carries more
15 weight than the opinion of a reviewing physician. *Id.* In addition, the
16 Commissioner's regulations give more weight to opinions that are explained than
17 to opinions that are not, and to the opinions of specialists on matters relating to
18 their area of expertise over the opinions of non-specialists. *Id.* (citations omitted).

19 If a treating or examining physician's opinion is uncontradicted, an ALJ may
20 reject it only by offering "clear and convincing reasons that are supported by

1 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
2 “However, the ALJ need not accept the opinion of any physician, including a
3 treating physician, if that opinion is brief, conclusory, and inadequately supported
4 by clinical findings.” *Bray v. Comm’r of Soc. Sec.*, 554 F.3d 1229, 1228 (9th Cir.
5 2000) (internal quotation marks and brackets omitted). An ALJ may only reject
6 the opinion of a treating or examining doctor by providing specific and legitimate
7 reasons that are supported by a substantial weight of the evidence, even if that
8 opinion is contradicted by another doctor. *Lester v. Chater*, 81 F.3d 821, 830-831
9 (9th Cir. 1995)). The opinion of a nonexamining physician may serve as
10 substantial evidence if it is supported by other independent evidence in the record.
11 *Andrews*, 53 F.3d at 1041.

12 *1. Dr. Maria Celerian, MD*

13 Dr. Celerian was a treating physician who opined in a medical source
14 statement form in October 2018 that Plaintiff had limitations amounting to less
15 than sedentary work. Tr. 29. To support her finding, Dr. Celerian opined Plaintiff
16 could sit for a total of one hour, stand for up to 1-2 hours, and walk for a total of 3-
17 4 hours per day. Tr. 29. Dr. Celerian also opined that Plaintiff could seldom
18 lift/carry up to 10 pounds and could never engage in squatting, crawling, climbing,
19 or pushing foot controls. Tr. 29.

1 The ALJ gave little weight to Dr. Celerian's opinion, finding the opinion
2 was not consistent with the record as a whole nor did it provide sufficient
3 explanation to support the conclusions. Tr. 29. Relevant factors to evaluating any
4 medical opinion include the amount of relevant evidence that supports the opinion,
5 the quality of the explanation provided in the opinion, and the consistency of the
6 medical opinion with the record as a whole. *Lingenfelter v. Astrue*, 504 F.3d 1028,
7 1042 (9th Cir. 2007); *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007).

8 Here, Plaintiff's own statements conflicted with Dr. Celerian's opinion. For
9 example, Plaintiff's function reports did not indicate difficulties with sitting, in
10 contrast to Dr. Celerian's finding that Plaintiff could only sit for a total of one hour
11 in an eight-hour day. Tr. 249, 273, 1155. Additionally, Plaintiff told one care
12 provider she had a valid driver's license and reported seeing spots in her vision
13 when driving, implying that she did, in fact, drive on occasion, contrary to Dr.
14 Celerian's assessment of Plaintiff's inability to push foot controls. Tr. 410, 646,
15 1156. Objective medical findings also conflicted with Dr. Celerian's opinion
16 regarding impairments with sitting. Specifically, imaging studies of Plaintiff's
17 spine showed mild to moderate changes that are "so common in adults without low
18 back pain" that the findings should be "interpreted with caution." Tr. 593, 1153.

19 Finally, Dr. Celerian's opinion was provided in a check-mark form and
20 contained very little explanation to support her findings. See Tr. 1155-58. In fact,

1 in the section asking for objective medical findings, Dr. Celerian provided only her
2 diagnosis and Plaintiff's reported symptoms. Tr. 1157. As the Ninth Circuit has
3 stated, an ALJ may "permissibly reject . . . check-off reports that do not contain
4 any explanation of the bases of their conclusions." *Molina v. Astrue*, 674 F.3d
5 1104, 1111 (9th Cir. 2012) (internal brackets and citation omitted). Thus, the ALJ
6 properly gave little weight to Dr. Celerian's opinion and provided "specific,
7 legitimate reasons based on substantial evidence in the record" for doing so. *Id.*

8 2. *Valerie Vela, MSW*

9 Plaintiff argues the ALJ erred by failing to address Valerie Vela's opinion.
10 ECF No. 15 at 15. Licensed clinical social workers, like Ms. Vela, are considered
11 "other sources" under the regulations. *See* SSR 06-03p, 2006 WL 2329939, at *2.
12 As such, these sources may not establish a medically determinable impairment. *Id.*
13 Nonetheless, in order to discount the competent testimony of "other" medical
14 sources, the ALJ must give "reasons germane to each witness for doing
15 so." *Molina*, 674 F.3d at 1111. In rejecting such testimony, the ALJ need not
16 "discuss every witness's testimony on a[n] individualized, witness-by-witness
17 basis. Rather, if the ALJ gives germane reasons for rejecting testimony by one
18 witness, the ALJ need only point to those reasons when rejecting similar testimony
19 by a different witness." *Id.* at 1114.

1 Here, the ALJ did not address Ms. Vela's opinion. Thus, Plaintiff is correct
2 that the ALJ erred in silently disregarding Ms. Vela's opinion. However, an ALJ's
3 failure to explain why a witness's testimony is discredited may be harmless error
4 "where the testimony is contradicted by more reliable medical evidence that the
5 ALJ credited" as is the cases here. *See Molina*, 674 F.3d at 1118-19. For example,
6 the ALJ gave great weight to the opinion of reviewing physician ,Dr. Regets, who
7 assessed Plaintiff with no medically determinable mental impairments. Tr. 28
8 (citing Tr. 112-27). Dr. Regets is an expert in disability evaluation with
9 knowledge of the regulations. Tr. 28. Moreover, the ALJ found Dr. Reget's
10 opinion was consistent with Plaintiff's record as a whole. *Id.*

11 Additionally, the ALJ gave significant weight to reviewing physician Dr.
12 Irwin's opinion regarding Plaintiff's functional limitations. *Id.* Dr. Irwin is also an
13 expert in disability evaluation with knowledge of the regulations. *Id.* The ALJ
14 ultimately found Plaintiff was slightly more limited than Dr. Irwin's June 2017
15 assessment, taking into account Plaintiff's hearing testimony and her reports to a
16 physical therapist that her pain eased when she alternated between sitting and
17 standing. Tr. 28 (citing Tr. 595).

18 Finally, the ALJ gave great weight to evaluating psychologist Dr. Genthe's
19 June 2017 in-person psychological evaluation of Plaintiff. Tr. 28. Dr. Genthe
20 opined that Plaintiff's mental abilities to do basic work were unimpaired. Tr. 28

1 (citing Tr. 412). The ALJ found Dr. Genthe's opinion was consistent with the
2 record as a whole and also consistent Plaintiff's own reports to him that her
3 physical issues were the reason for her unemployment. Tr. 28 (citing 408, 411).

4 The ALJ erred in failing to address Ms. Vela's opinion, but the error was
5 harmless because the ALJ found more reliable medical evidence to support his
6 findings.

7 *3. Dr. Genthe*

8 Plaintiff argues the ALJ erred in rejecting Dr. Genthe's September 2017
9 opinion. ECF No. 15 at 15-16. The ALJ gave Dr. Genthe's September 2017
10 evaluation little weight, finding the "severe mental limitations" rating assigned in
11 September was inconsistent with the "no mental limitations" rating assigned in
12 June 2017, and inconsistent with the record as a whole. Tr. 29. To illustrate, one
13 month after the September 2017 evaluation, Plaintiff reported she was doing really
14 well. Tr. 28 (citing Tr. 1046). Nearly a year later, Plaintiff continued to report she
15 was in a good place, felt her moods had been stable, and was engaging in activities
16 she enjoyed. Tr. 29 (citing Tr. 1104). Moreover, Dr. Genthe noted in the
17 September 2017 evaluation that Plaintiff's responses were inconsistent and/or
18 random, which raised questions as to reliability. Tr. 29 (citing 419, 422). Overall,
19 the ALJ concluded Dr. Genthe's September 2017 evaluation was not well
20 supported or consistent with other evidence of record. Tr. 29. As previously

1 noted, one relevant factor in evaluating any medical opinion includes the
2 consistency of the medical opinion with the record as a whole. *Orn*, 495 F.3d at
3 631. The ALJ provided specific and legitimate reasons for giving Dr. Genthe's
4 September 2017 evaluation little weight and those reasons are supported by
5 substantial evidence.

6 **D. ALJ's burden regarding Plaintiff's ability to perform other jobs**
7 **available in the local and national economy**

8 Plaintiff argues the ALJ failed to meet his burden at step five, alleging the
9 ALJ erroneously relied on an incomplete hypothetical. ECF No. 15 at 20. If a
10 claimant cannot perform his or her past relevant work, at step five the ALJ must
11 show there are a significant number of jobs in the national economy the claimant is
12 able to do. *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999); 20 C.F.R. §§
13 404.1520(d)-(e), 416.920(d)-(e). To do so, the ALJ may employ the testimony of a
14 vocational expert. *Tackett*, 180 F.3d at 1100-01; *Osenbrock v. Apfel*, 240 F.3d
15 1157, 1162 (9th Cir.2000). The ALJ's findings will be upheld if the weight of
16 medical evidence in the record supports the hypothetical posed by the ALJ.
17 *Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir.1987); *Gallant v. Heckler*, 753
18 F.2d 1450, 1456 (9th Cir.1984). The vocational expert's testimony will qualify as
19 substantial evidence if it is reliable. *Embrey v. Bowen*, 849 F.2d 418, 422 (9th
20 Cir.1988).

1 Here, the hypothetical posed to the vocational expert asked the expert to
2 consider a claimant with Plaintiff's age, education, work experience, and residual
3 functional capacity to perform light work with the following additional limitations:

4 [Plaintiff] can stand/walk for 4 hours in an 8-hour day; she can sit
5 through a work day with normal breaks; she needs an option to change
6 sitting/standing positions every 30 minutes, while remaining at the
7 work station; she can engage in occasional, non-repetitive operation of
8 foot controls bilaterally; she can occasionally climb ramps/stairs,
9 balance, stoop, kneel, or crouch; she can never crawl or climb ladders,
ropes, or scaffolds; she can frequently handle and finger bilaterally;
she should avoid concentrated exposure to extremes of heat/cold,
pulmonary irritants, and hazards; and she has no vision in the right
eye.

10 Tr. 31, 24. The vocational expert testified that the hypothetical individual would
11 be able to perform the following representative occupations: Telephone Quotation
12 Clerk with approximately 3,400 jobs in the national economy; Call-Out Operator
13 with approximately 5,200 jobs in the national economy; Addresser with
14 approximately 5,700 jobs in the national economy; and Document Preparer with
15 approximately 46,000 jobs in the national economy. Tr. 31.

16 Plaintiff argues the hypothetical failed to account for certain of her
17 limitations. ECF No. 15 at 20. To support her claims, Plaintiff restated her
18 argument that the ALJ failed to account for certain alleged impairments. *Id.* A
19 claimant cannot establish an ALJ erred at step five by rearguing the ALJ's residual
20 functional capacity assessment did not account for her limitations. *See Stubbs-*

1 *Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2008). As previously
2 discussed, the Court finds the ALJ did not erroneously reject some of Plaintiff's
3 alleged limitations as non-severe where the limitations were accounted for in
4 Plaintiff's residual functional capacity. The ALJ's conclusion that Plaintiff is able
5 to perform certain jobs in the national economy is supported by substantial
6 evidence.

7 CONCLUSION

8 Having reviewed the record and the ALJ's findings, this Court concludes
9 that the ALJ's decision is supported by substantial evidence and free of harmful
10 legal error.

11 ACCORDINGLY, IT IS HEREBY ORDERED:

12 1. Plaintiff's Motion for Summary Judgment (ECF No. 15) is DENIED.


13 2. Defendant's Motion for Summary Judgment (ECF No. 16) is

14 GRANTED.

15 The District Court Executive is directed to enter this Order, enter judgment
16 accordingly, furnish copies to counsel, and **close the file**.

17 **DATED** January 15, 2021.




THOMAS O. RICE
United States District Judge